BERNARD JOSEPH ROSA, JR., Plaintiff, v. STATE OF CALIFORNIA, CALIFORNIA BOARD OF ACCOUNTANCY, CAROL SIGMANN, GREGORY P. NEWINGTON, LAWRENCE KNAPP, BILL LOCKYER, JOEL PRIME, RONALD DEIDRICH, MICHAEL R. GRANEN, and STEPHEN J. SMITH, Defendants.

NO. CIV. S-04-945 WBS PAN

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

2005 U.S. Dist. LEXIS 42411

August 5, 2005, Decided

August 8, 2005, Filed

MEMORANDUM AND ORDER RE: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' MOTION TO DISMISS

Plaintiff, a pro se [*2] litigant, brings claims against the State of California; the California Board of Accountancy ("CBA"); Carol Sigmann, Gregory P. Newington, and Lawrence Knapp as individuals and as agents and employees of the CBA; Bill Lockyer as Attorney General of California; Stephen J. Smith as Administrative Law Judge; and Joel Prime, Ronald Deidrich, and Michael R. Granen as individuals and as

agents and employees of the California Attorney General. Plaintiff alleges violations of 42 U.S.C. §§ 1983, 1985, and 1986; violations of the California Constitution; California Government Code § 1222; California Business and Professions Code § 6068; California Civil Code § 52.1; intentional infliction of emotional distress; negligent infliction of emotional distress; and defamation. He also asks for reinstatement of his Certified Public Accountant ("CPA") license, general damages in the amount of $ 2,000,000, punitive damages against each defendant in the amount of $ 1,500,000, costs of suit, and attorneys' fees.

Jurisdiction is predicated upon 28 U.S.C. §§ 1331 [*3] (federal question) and 1367 (supplemental jurisdiction). Plaintiff moves for summary judgment on all of his claims pursuant to Federal Rule of Civil Procedure 56. Defendants move to dismiss all plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. Factual and Procedural Background 1

FOOTNOTES

1 Unless otherwise noted, all facts in this section are taken from plaintiff's First Amended Complaint.

Plaintiff received his CPA certificate in 1969. (First Am. Compl. P 7). In 1974, after working for several different employers, he became a sole practitioner providing professional accounting services. Around 1983, plaintiff developed what he refers to as a "tax strategy" to reduce and in some cases eliminate the self-employment tax. One of plaintiff's former clients complained to the CBA, and the CBA commenced an action against the plaintiff. (Id. P 7).

After the CBA commenced action against plaintiff, the Attorney [*4] General's Office and the CBA began negotiations designed to settle the action. (Id. P 8). Sometime in November 1993, plaintiff orally agreed to a stipulation presented by defendant Joel Primes, Supervising Deputy Attorney General. (Id. at 19 n.iv). The exact provisions of the stipulation are not explained by plaintiff. In December 1993, plaintiff reassessed his decision and refused to agree to the stipulation unless any and all references to "fraud, dishonesty, and gross negligence" were removed. (Id.) Plaintiff alleges that defendant Primes agreed to make the changes if plaintiff signed a blank signature page which Primes would later attach to the modified stipulation. When plaintiff expressed his reluctance to sign a blank signature page, Primes allegedly threatened to withdraw the offer to settle the case. (Id.

P 11). Plaintiff relented, signed the signature page, and faxed it to Primes. (Id. P 8).

In April 1994, plaintiff received the modified stipulation with his attached signature. (Id. P 12). He alleges that he assumed all the terms were correct, and did not become aware that the agreed-upon changes had not been made until he reviewed the stipulation [*5] sometime around November 1994. (Id. PP 9, 13). Plaintiff alleges that one of the defendants told him the matter would be resolved at a probation hearing. 2 At this probation hearing, plaintiff alleges that the judge "refused" to hear plaintiff's attempts to explain the situation with the stipulation. 3 (Id. P 15). In December 1995, plaintiff's CPA certificate was revoked. (Id. P 16).

FOOTNOTES

2 With the exception of Joel Primes, plaintiff does not explain the individual involvement of any of the named defendants in his complaint. He refers only to "defendant" and "defendants" without explaining to which defendant or defendants he is referring.

3 The court assumes for the purposes of these motions that the judge referred to in the complaint is defendant Stephen J. Smith, the Administrative Law Judge

named in plaintiff's complaint.

It appears that approximately four years passed before plaintiff decided to petition the CBA for reinstatement of his license. (See id. PP 16-19). In October 1999, [*6] this petition was denied by the CBA, which allegedly still relied at least in part on the disputed stipulation. The CBA allegedly stated that it was too late for any action and that plaintiff had not provided adequate proof of rehabilitation. (Id. P 19). Plaintiff's petition for reinstatement was again denied in March of 2001, July of 2002, sometime in 2003, and March of 2004. All of these denials were allegedly for the same reasons. (Id. PP 20-22).

On May 10, 2004, plaintiff filed a complaint and initiated the present lawsuit. The matter was referred to United States Magistrate Judge Peter A. Nowinski pursuant to 28 U.S.C. §§ 636, et seq., and Local Rule 72-302. Defendants responded to plaintiff's complaint on June 14, 2004 with a motion to dismiss, and an amended motion to dismiss on June 21, 2004. Plaintiff filed a first amended complaint ("FAC") on July 14, 2004, rendering the motion to dismiss moot. Without filing an answer, defendants renewed their motion to dismiss on August 9, 2004, and then filed an amended motion on August 10, 2004. On April 14, 2005, plaintiff

filed a motion for summary judgment.

The magistrate judge issued findings [*7] and recommendations recommending that defendants' motion to dismiss be granted and that plaintiff's motion for summary judgment be denied. (June 6, 2005 Magistrate Judge's Findings and Recommendations). On June 15, 2005, plaintiff filed objections to the findings and recommendations. On June 28, 2005, defendants filed a response to plaintiff's objections to the findings and recommendations. The court reviews both plaintiff's motion for summary judgment and defendants' motion to dismiss de novo. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); Local Rule 72-304. 4

FOOTNOTES

4 Plaintiff objects to defendants' response to his objections to the magistrate judge's findings and recommendations as untimely. (See Pl.'s Objections to Defs.' Untimely Response to Objections to Magistrate Judge's Findings & Recommendations at 1-2). However, this objection is moot because the court need not rely on any of the arguments in the defendants' response to decide the motions before it, which it reviews de novo.

[*8] II. Discussion

A. Plaintiff's Motion for Summary Judgment

The court must grant summary judgment to a moving party "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The party adverse to a motion for summary judgment may not simply deny generally the pleadings of the movant; the adverse party must designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Simply put, "a summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). The nonmoving party must show more than a mere "metaphysical doubt" as to the material facts. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

Plaintiff essentially makes two [*9] arguments: First, defendants' motion to dismiss was untimely. Plaintiff does not explain why summary judgment would be

warranted if defendants' motion were untimely. Presumably, the argument would be that the court should disregard the untimely motion and grant a default judgment against all defendants for failure to respond to defendant's FAC. Second, plaintiff argues that because defendants' motion to dismiss fails to deny any of the allegations in plaintiff's FAC, the court should deem defendants to have admitted all the allegations in plaintiff's FAC, and enter judgment in plaintiff's favor as a matter of law.

i. The Motion to Dismiss Was Not Untimely

Plaintiff argues, without citing any order or authority, that defendant's response to his first amended complaint was due "on or before July 22, 2004," which was ten (10) days after the filing of the amended complaint. Were this true, it would be strange indeed, since the Ninth Circuit has explicitly held that "a motion under Federal Rule of Civil Procedure 12(b) [may be filed] any time before the responsive pleading is filed." Aetna Life Ins. Co. v. Alla Med. Servs., Inc., 855 F.2d 1470, 1474 (9th Cir. 1988) [*10] (emphasis added). In reversing the district court that found a Rule 12(b)(6) motion to be untimely, the Aetna court held that because "[t]he [Rule] 12(b)(6) motion to dismiss was filed . . . before an answer to the complaint," the motion was timely, and the district court had erred in ruling otherwise. Id. Here, the

motion to dismiss was filed before the filing of any answer. Thus, as a matter of law, the motion to dismiss was timely.

ii. It Would Be Improper to Deem Plaintiffs' Allegations Admitted by Defendants

Plaintiff argues that since defendants have not filed an answer, they have not denied any of the allegations in his complaint, and that defendants must therefore be deemed to have admitted all the allegations in plaintiff's FAC. This is not the law. In fact, other district courts in this circuit have denied motions for summary judgment in nearly identical situations. In Batdorf v. Trans Union, a pro se plaintiff moved for summary judgment on three causes of action after the defendant filed a motion to dismiss on the other causes of action in the complaint, contending that the defendant had admitted the allegations of his complaint relating to [*11] the claims he did not move to dismiss by failing to file an answer. 2000 U.S. Dist. LEXIS 6796, at *11-12 (N.D. Cal. May 16, 2000). The district court denied the motion, stating that the filing of a motion to dismiss enlarges the time for a defendant to respond to the entire complaint, including the causes of action it did not move to dismiss. Id. at 12. Likewise, in Terry v. Internal Revenue Service, another district court denied a similar "motion for default judgment or in the alternative motion for

summary judgment" brought by a plaintiff, finding that because the defendants filed a motion to dismiss pursuant to Rule 12(b), they were not yet required to file an answer. 1997 U.S. Dist. LEXIS 17025, at *6-7 (D. Az. Sept. 30, 1997). The reasoning of these cases is persuasive. Therefore, the court follows its sister courts and denies plaintiff's motion for summary judgment.

B. Defendants' Motion to Dismiss

Defendants move to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that plaintiff can prove no set of facts which would entitle him to relief. In ruling on such a motion, the court must [*12] assume all of plaintiff's allegations are true and construe the complaint in the light most favorable to plaintiff. United States v. City of Redwood City, 640 F.2d 963, 966 (9th Cir. 1981). However, the court need not assume the truth of legal conclusions cast in the form of factual allegations. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Defendants base their motion on several arguments and authorities, many of which they contend independently warrant dismissal.

i. The Younger Abstention Doctrine Forbids the Court From Interfering in State Administrative Proceedings

Plaintiff seeks, among other things, reinstatement of

his CPA license. The administrative proceeding for seeking reinstatement is, however, judicial in nature. It involves a hearing before a state administrative law judge, and at such hearing, plaintiff is required to show rehabilitation sufficient to warrant reinstatement of his CPA license. Should plaintiff be dissatisfied with the results of these state administrative remedies, he can seek relief in state court by way of a petition for writ of mandate. Cal. Civ. Proc. Code § 1094.5 [*13] .

The nature of the proceeding is important because the Younger abstention doctrine states that except in exceptional and extremely limited circumstances, a federal court must not intervene by way of injunction or declaration in a state criminal proceeding or administrative proceeding that is judicial in nature. Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc., 477 U.S. 619, 626, 106 S. Ct. 2718, 91 L. Ed. 2d 512 (1986); Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432-34, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982); Younger v. Harris, 401 U.S. 37, 56, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971); cf. Geiger v. Jenkins, 401 U.S. 985, 91 S. Ct. 1236, 28 L. Ed. 2d 525 (1971)(summarily affirming district court which dismissed claims under 42 U.S.C. §§ 1983, 1985, and 1988 to abstain from interfering with medical license revocation proceedings). The policy underlying this doctrine has been described as:

[A] proper respect for state functions, a recognition of

the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions [*14] are left free to perform their separate functions in their separate ways.
Middlesex, 457 U.S. at 431 (citing Younger, 401 U.S. at 44).

Because the proceeding for reinstatement of plaintiff's CPA license is judicial in nature, and generally to be obtained from the state, the Younger abstention doctrine and its underlying policies of respect for state authority over state matters militate against entertaining plaintiff's request for reinstatement of his CPA license. Therefore, the court will abstain from reaching this issue.

ii. Eleventh Amendment Immunity Bars Plaintiff's Federal Claims Against the State of California and the CBA

States and state agencies are immune from suit in federal court by virtue of the Eleventh Amendment to the United States Constitution. Seminole Tribe of Fla v. Florida, 517 U.S. 44, 53, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996); Belanger v. Madera Unified School Dist., 963 F.2d 248, 250 (9th Cir. 1992)(holding that Eleventh Amendment immunity extended to school

district as state agency). The type of relief sought is irrelevant, as the Eleventh Amendment does not exist solely to prevent federal court judgments [*15] that must be paid out of a state's treasury, but to prevent the indignity of subjecting a State to the judicial process at the behest of a private individual. Seminole, 517 U.S. at 58. This immunity can be abrogated, but only where Congress has acted with clear and unequivocal intent to abrogate the immunity, and where Congress acted pursuant to a valid exercise of its power. Id. at 55.

There is no "clear and unequivocal" language in 42 U.S.C. §§ 1983, 1985, or 1986 to abrogate Eleventh Amendment immunity. See also Quern v. Jordan, 440 U.S. 332, 341, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979) (" § 1983 does not abrogate the State's Eleventh Amendment immunity."). Therefore, the State of California and the CBA, as an agency of the State of California, are both immune from suit. See Carberry v. State Bd. of Accountancy, 28 Cal. App. 4th 770, 772, 33 Cal. Rptr. 2d 788 (1994)(defining California Board of Accountancy as "the state agency empowered to license certified public accountants") (emphasis added). Accordingly, all of plaintiff's claims against defendants the State of California and the California [*16] Board of Accountancy are barred by the Eleventh Amendment.

iii. Plaintiff's Federal Claims Against the Attorney General and His Employees are Time-Barred

To the extent that Eleventh Amendment immunity does not bar plaintiff's claims brought against the Attorney General and his employees in their individual capacities, such claims are time-barred. Federal courts turn to state law on personal injury claims for statutes of limitations in actions brought under 42 U.S.C. §§ 1983 and 1985. Burnett v. Grattan, 468 U.S. 42, 48-49, 104 S. Ct. 2924, 82 L. Ed. 2d 36 (1984); see also Wilson v. Garcia, 471 U.S. 261, 266-67, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985)(applying state personal injury statute of limitations to action filed under § 1983). Prior to 2002, the statute of limitations on personal injury actions in California was one (1) year. Cal. Civ. Proc. Code § 340(c)(2001). Since all of the allegations regarding plaintiff's claims against these defendants under §§ 1983 and 1985 refer to actions taken before 2002, California's previous one-year statute of limitations applies to them. Plaintiff's claims under § 1986 have an explicit [*17] one (1) year statute of limitations. 42 U.S.C. § 1986 ("But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.").

According to plaintiff's complaint, the misrepresentations and misdeeds by defendant Primes

and other members of the Attorney General's office occurred in 1994 and earlier. (Compl. PP 8-12, id. at 19 n.iv). There are no factual allegations implicating anyone from the Attorney General's office after 1994. Nor does plaintiff argue or present any facts to suggest that the statute of limitations was tolled. Further, it appears from plaintiff's complaint that since the stipulation was issued in 1994, plaintiff has been dealing solely with the CBA in his attempts to get his CPA license reinstated. Thus, all of plaintiff's federal claims against defendants Lockyer, Primes, Diedrich, Granen, and Werner are barred by the relevant statutes of limitations, whether such claims are brought against them in their official or individual capacities.

iv. Plaintiff's Claims Against Agents of the CBA and the Attorney General are also Barred by Prosecutorial Immunity

[*18] Although the Eleventh Amendment does not protect the Attorney General, his agents, and the agents of the CBA to the extent they are sued in their individual capacities, prosecutorial immunity does. Kleinman v. Multnomah County, 2004 U.S. Dist. LEXIS 21466, at *16-17 (D. Or. Oct. 15, 2004) (citing Imbler v. Pachtman, 424 U.S. 409, 419, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976)). "Absolute immunity extends to agency officials when they preside over hearings,

initiate agency adjudication, or otherwise perform functions analogous to judges and prosecutors." Romano v. Bible, 169 F.3d 1182, 1186 (9th Cir. 1999) (citing Butz v. Economou, 438 U.S. 478, 514-15, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978)). Intent and motivation is relevant to qualified immunity, but irrelevant to absolute immunity; absolute immunity defeats a suit regardless of the underlying intent as long as the actions were closely associated with the judicial process. Imbler, 424 U.S. at 419; Romano, 169 F.3d at 1186. "Prosecutorial immunity extends to the process of plea bargaining as an integral part of the judicial process." Briley v. State of California, 564 F.2d 849, 856 (9th Cir. 1977). [*19] Additionally, the Supreme Court looks to the "nature of the function performed, not the identity of the actor who performed it." Romano, 169 F.3d at 1186 (emphasis added); see also Hirsh, 67 F.3d 708, 715(holding that California Attorney General was entitled to absolute immunity for his limited role in State Bar disciplinary system).

The hearings before the CBA and an administrative law judge are, at a minimum, quasi-judicial. The actions taken by the CBA and its agents and employees in revoking plaintiff's license, and later denying his application for reinstatement, were closely associated with this process. "[A]gency officials performing certain functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such

acts." Butz, 438 U.S. at 515. Since these defendants were behaving as prosecutors in an adjudicative process, plaintiffs' claims against defendants Sigmann, Newington, and Knapp are barred by prosecutorial immunity.

Further, all of the allegations of misconduct plaintiffs makes against the agents and employees of the Attorney General's office involve actions undertaken [*20] in connection with the prosecution of plaintiff and the eventual revocation of his CPA license. The "stipulation" that plaintiff alleges was fraudulent was essentially a plea bargain. Thus, even if plaintiffs' claims against the Attorney General and his employees were not time-barred, they would be barred by prosecutorial immunity, notwithstanding the capacity in which they were named as defendants. See Briley, 564 F.2d at 856.

v. Plaintiff's Claim Against Administrative Law Judge Smith is Barred by Absolute Judicial Immunity

It is well-established that judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacities. Stump v. Sparkman, 435 U.S. 349, 355-56, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986). This doctrine applies to administrative law judges. Butz,

438 U.S. at 513-14. The factual allegations involving defendant Smith concern only his role as a judge in the administrative adjudicative process. Thus, plaintiff's claims against defendant Smith are barred by judicial immunity.

vi. Further Amendments [*21] Would Be Futile

Generally, leave to amend should be granted when a motion to dismiss is granted. Schreiber Dist. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (1986). However, if the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency, the court may dismiss without leave to amend. Id. Here, no other facts that could be alleged consistent with plaintiff's FAC would defeat defendants' multiple immunities and the relevant statutes of limitations. Therefore, the court will dismiss all of plaintiff's federal claims with prejudice.

C. Remaining State-Law Claims

The court has supplemental jurisdiction over plaintiff's state-law claims pursuant to 28 U.S.C. § 1367(a). Under 28 U.S.C. § 1367(c)(3), a district court may decline to exercise supplemental jurisdiction over state-law claims where the court has dismissed all claims over which it has original jurisdiction. Voigt v.

Savell, 70 F.3d 1552, 1565 (9th Cir. 1995). "In the usual case in which all federal-law claims are eliminated before trial, the balance of factors [*22] to be considered under the pendent jurisdiction doctrine -- judicial economy, convenience, fairness, and comity -- will point toward declining to exercise jurisdiction over the remaining state-law claims." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7, 108 S. Ct. 614, 98 L. Ed. 2d 720 (1988). The balance of factors generally indicates that a case belongs in state court when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain. Id.

Here, plaintiff's federal claims will all be dismissed prior to trial. Because the court was able to decide plaintiff's federal claims without reaching the issues underlying plaintiff's state-law claims remaining in this case, the court will decline to exercise supplemental jurisdiction over the state-law claims pursuant to 28 U.S.C. § 1367(c)(3).

IT IS THEREFORE ORDERED that:

(1) plaintiff's motion for summary judgment be, and the same hereby is, DENIED;

(2) defendants' motion to dismiss be, and the same hereby is, GRANTED;

(3) plaintiff's claims under 42 U.S.C. §§ 1983, 1985, and 1986 be, and the same hereby [*23] are, DISMISSED WITH PREJUDICE; and

(4) plaintiff's state-law claims be, and the same hereby are, DISMISSED pursuant to 28 U.S.C. § 1367(c)(3).

DATED: August 5, 2005

WILLIAM B. SHUBB

UNITED STATES DISTRICT JUDGE